

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1254

Introduced by Assembly Member Gorell

February 22, 2013

An act to amend Section 998 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1254, as amended, Gorell. Civil actions: settlement offers.

~~Existing law governs offers by a party to compromise a dispute that is to be resolved by trial or arbitration. Existing law provides that not less than 10 days prior to commencement of trial or arbitration of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. Existing law sets forth the requirements for the written offer and for the acceptance of the offer.~~

Under existing law, any party may serve an offer in writing, not less than 10 days prior to the commencement of trial or arbitration, upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. Existing law provides that if the offer is not accepted prior to trial or arbitration or within 30 days after it is made, whichever comes first, and the offering party obtains a more favorable result at trial or arbitration, the party making the offer may recover his or her postoffer costs, including, at the discretion of the court or arbitrator, costs of the services of expert witnesses, as specified, actually incurred and reasonably necessary in preparation for trial or arbitration of the case.

This bill would provide that for a settlement offer that is not accepted to have the above-described effect, it must be served 15 days prior to the commencement of trial or arbitration and not be accepted prior to the trial or arbitration or within 25 days after the offer is made, whichever comes first.

This bill would *also* make a technical, nonsubstantive ~~changes~~ *change* to these provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 998 of the Code of Civil Procedure is
2 amended to read:

3 998. (a) The costs allowed under Sections 1031 and 1032 shall
4 be withheld or augmented as provided in this section.

5 (b) Within ~~10~~ 15 days prior to commencement of trial or
6 arbitration, provided in Section 1281 or 1295, of a dispute to be
7 resolved by arbitration, any party may serve an offer in writing
8 upon any other party to the action to allow judgment to be taken
9 or an award to be entered in accordance with the terms and
10 conditions stated at that time. The written offer shall include a
11 statement of the offer, containing the terms and conditions of the
12 judgment or award, and a provision that allows the accepting party
13 to indicate acceptance of the offer by signing a statement that the
14 offer is accepted. Any acceptance of the offer, whether made on
15 the document containing the offer or on a separate document of
16 acceptance, shall be in writing and shall be signed by counsel for
17 the accepting party or, if not represented by counsel, by the
18 accepting party.

19 (1) If the offer is accepted, the offer with proof of acceptance
20 shall be filed and the clerk or the judge shall enter judgment
21 accordingly. In the case of an arbitration, the offer with proof of
22 acceptance shall be filed with the arbitrator or arbitrators who shall
23 promptly render an award accordingly.

24 (2) If the offer is not accepted prior to trial or arbitration or
25 within ~~30~~ 25 days after it is made, whichever occurs first, it shall
26 be deemed withdrawn, and cannot be given in evidence upon the
27 trial or arbitration.

1 (3) For purposes of this subdivision, a trial or arbitration shall
2 be deemed to be actually commenced at the beginning of the
3 opening statement of the plaintiff or counsel, and if there is no
4 opening statement, then at the time of the administering of the oath
5 or affirmation to the first witness, or the introduction of any
6 evidence.

7 (c) (1) If an offer made by a defendant is not accepted and the
8 plaintiff fails to obtain a more favorable judgment or award, the
9 plaintiff shall not recover his or her postoffer costs and shall pay
10 the defendant's costs from the time of the offer. In addition, in any
11 action or proceeding other than an eminent domain action, the
12 court or arbitrator, in its discretion, may require the plaintiff to
13 pay a reasonable sum to cover costs of the services of expert
14 witnesses, who are not regular employees of any party, actually
15 incurred and reasonably necessary in either, or both, preparation
16 for trial or arbitration, or during trial or arbitration, of the case by
17 the defendant.

18 (2) (A) In determining whether the plaintiff obtains a more
19 favorable judgment, the court or arbitrator shall exclude the
20 postoffer costs.

21 (B) It is the intent of the Legislature in enacting subparagraph
22 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,
23 209 Cal.App.3d 996, that attorney's fees awarded to the prevailing
24 party were not costs for purposes of this section but were part of
25 the judgment.

26 (d) If an offer made by a plaintiff is not accepted and the
27 defendant fails to obtain a more favorable judgment or award in
28 any action or proceeding other than an eminent domain action, the
29 court or arbitrator, in its discretion, may require the defendant to
30 pay a reasonable sum to cover postoffer costs of the services of
31 expert witnesses, who are not regular employees of any party,
32 actually incurred and reasonably necessary in either, or both,
33 preparation for trial or arbitration, or during trial or arbitration, of
34 the case by the plaintiff, in addition to plaintiff's costs.

35 (e) If an offer made by a defendant is not accepted and the
36 plaintiff fails to obtain a more favorable judgment or award, the
37 costs under this section, from the time of the offer, shall be
38 deducted from any damages awarded in favor of the plaintiff. If
39 the costs awarded under this section exceed the amount of the
40 damages awarded to the plaintiff the net amount shall be awarded

1 to the defendant and judgment or award shall be entered
2 accordingly.

3 (f) Police officers shall be deemed to be expert witnesses for
4 the purposes of this section. For purposes of this section, “plaintiff”
5 includes a cross-complainant and “defendant” includes a
6 cross-defendant. Any judgment or award entered pursuant to this
7 section shall be deemed to be a compromise settlement.

8 (g) This chapter does not apply to either of the following:

9 (1) An offer that is made by a plaintiff in an eminent domain
10 action.

11 (2) Any enforcement action brought in the name of the people
12 of the State of California by the Attorney General, a district
13 attorney, or a city attorney, acting as a public prosecutor.

14 (h) The costs for services of expert witnesses for trial under
15 subdivisions (c) and (d) shall not exceed those specified in Section
16 68092.5 of the Government Code.

17 (i) This section ~~shall~~ *does* not apply to labor arbitrations filed
18 pursuant to memoranda of understanding under the Ralph C. Dills
19 Act (Chapter 10.3 (commencing with Section 3512) of Division
20 4 of Title 1 of the Government Code).